



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/168023

PRELIMINARY RECITALS

Pursuant to a petition filed August 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on January 05, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of Medicaid benefits from the Petitioner in the amount of \$979.14 for the period of November 1, 2014 – March 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Belinda Brown
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On or about May 14, 2014, the Petitioner reported to the agency that she was pregnant. On May 19, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she was

enrolled in BC+ effective June 1, 2014. The notice also informed her of the requirement to report to the agency within 10 days if someone in the household “becomes pregnant or has a pregnancy end.”

3. On June 19, 2014, the Petitioner submitted a Six Month Report Form (SMRF). No changes were reported.
4. On October 6, 2014, the Petitioner completed a healthcare benefits renewal. The renewal reports that the Petitioner is pregnant with a due date of December 15, 2014.
5. On October 28, 2014, the agency issued a Notice of Decision to the Petitioner informing her that she would continue to receive BC+ benefits effective November 1, 2014. The notice also informed her of the requirement to report to the agency within 10 days if someone in the household “becomes pregnant or has a pregnancy end.”
6. On January 28, 2015, the agency received a “pregnancy past due” alert.
7. On February 2, 2015, the Petitioner contacted the agency to report that her pregnancy ended in a miscarriage. On February 6, 2015, the agency contacted the Petitioner to determine the date her pregnancy ended. The Petitioner reported it was June or July, 2014.
8. Petitioner’s actual gross monthly wages for November, 2014 – February, 2015 were as follows:

November, 2014	\$2,859.24
December, 2014	\$2,989.24
January, 2015	\$4,662.59
February, 2015	\$3,302.44
9. On July 8, 2015, the agency issued a Medical Assistance/BadgerCare/BadgerCare Plus Overpayment Notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of BC+ benefits in the amount of \$979.14 for the period of November 1, 2014 – March 31, 2015.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. The error does not have to be intentional; unintentional errors are to be recovered but are not considered to be fraudulent. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." BC+ Handbook, App. 28.4.2.

In this case, the Petitioner does not dispute that she did not report her miscarriage until February, 2015. She testified that it was a traumatic experience and the failure to report was an oversight. She asked for consideration of the fact that she has children and the overpayment would be a hardship for her to repay. The Petitioner also questioned the overpayment period.

The agency conceded at the hearing that the overpayment should end as of February 28, 2015 because the Petitioner reported the end of the pregnancy on February 2, 2015. Therefore, the agency is willing to reduce the overpayment by \$181.92, the amount it had determined to be an overpayment for March, 2015. That leaves an overpayment of \$797.22 at issue. Though the agency could have started the overpayment sooner, it commenced the overpayment in November, 2014, the month following the Petitioner's renewal in October, 2014 when she failed to report the end of her pregnancy.

I conclude that the agency properly seeks to recover the net capitation rate and claims paid for the period of November 1, 2014 – February 28, 2015. The Petitioner erred by not properly and timely reporting the end of her pregnancy. The Petitioner requests equitable relief from the requirement to repay. An administrative law judge does not have the authority to grant the equitable relief requested.

I reviewed the agency's calculation of the overpayment and, other than including March, 2015 in error, I find no other mistake in the agency's calculations.

CONCLUSIONS OF LAW

The agency may recover an overissuance of BC+ benefits from the Petitioner in the amount of \$797.22 for the period of November 1, 2014 – February 28, 2015.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to revise the overpayment period to November 1, 2014 – February 28, 2015 and the overpayment amount to \$797.22. This shall be completed as soon as possible but no later than 10 days from the date of this decision.

In all other respects, the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 15, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability